



European Ombudsman consultation on

The transparency of trilogues (Case: OI/8/2015/JAS)

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1. In your opinion, is the way in which EU legislation is negotiated through the trilogue process sufficiently transparent? Please give brief reasons for your answer.

The lack of transparency in the current trilogue process threatens to undermine all other efforts to promote a perception of openness in the EU's system of legislation. By closing the doors on public oversight at the very end of the process, trilogue can legitimately be considered to invalidate the openness of all previous stages, especially when institutional actors change their mandated positions at the last minute.

It is currently very difficult to impossible for civil society to access any documents or receive any information about the trilogue process. Experience shows that only very well connected interest groups with well-established contacts are able to access such documents.

For example, in the recently concluded trilogue negotiation on the multi-annual fisheries management plan for the Baltic Sea, COM(2014) 614, publicly available information was very limited. This often led to the different institutions blaming each other (including in public) about "who said what". Yet, for those trying to following the discussions, no objective analysis of what was actually happening was possible. Throughout the process, it was also difficult to follow what was agreed and what was still to be discussed, as the respective documents were not made public.

Another example are the discussions on the Common Agriculture Policy (CAP) between 2010 and 2014 that were highly complex, consisting of many different pieces of EU legislation and with the Parliament alone tabling over 7000 amendments. As there were many players and many different legislative files, it was extremely complex to find out any information during the trilogues. Only those interest groups with established connections within the EU institutions were able to get an overview of the dossier, while the public was left in the dark about a final decision making process on a dossier that covered over 1/3 of the EU budget. This current system allows only the most-well connected people to influence this important final negotiation process of EU decision-making.

2. Please explain how, in your view, greater transparency might affect the EU legislative process, for example in terms of public trust in the process, the efficiency of the process or other public interests.

The trilogue process remains one of the last bastions of secretive decision making in the EU. While the Council, the Commission and the Parliament – each in their own way and often still to a limited extent – have tried to open up their decision making process by publishing information online, granting access to documents when requested, live screening certain debates, etc., this is not reflected in the final step of decision making. There, where the institutions come together and make compromises on their agreed mandates, it is done behind closed doors.

One benefit of opening up the process would be a greater sense of accountability of the three institutions to the public. This does not mean however that there should not be space for “deal making” to take place; the real issue is maintaining accountability when negotiators go outside of their mandate. While the public has gained more understanding and insight into the setting of this mandate, it is the final decision on how to use it that will make the difference between keeping or breaking a promise to citizens and voters.

In general, being more transparent should also serve to increase the interest of European citizens in EU politics. The current rise in anti-EU sentiment is partly fuelled by the perceived lack of transparency and accountability in the EU decision making process. While the majority of the process is fully transparent to those who know how to access the documents, the trilogues negotiations are the last opaque bastion, colouring the perception of the entire process.

3. The institutions have described what they’re doing about the **proactive publication** of trilogue documents [5]. In your opinion, would the proactive release of all documents exchanged between the institutions during trilogue negotiations, for example “four-column tables” [6], **after the trilogue process has resulted in an agreement on the compromise text**, ensure greater transparency? At which stage of the process could such a release occur? Please give brief reasons.

Releasing the “four-column tables” would ensure greater transparency, but it would be an insufficient and belated step. It would mean that societal actors could evaluate the process ex post facto and analyse the outcome and convey their reactions to the different negotiating actors. However, this is inadequate all documents should be made public at the stage of the process in which they are produced. That should include, but is not limited to, four-column documents, minutes of the meetings, agendas, technical clarification documents, etc. It is during the process that negotiating parties need to be aware of the public interest, not when the deal is concluded.

As explained above (see question 2), without being able to see the changes and agreements during the trilogue process makes it difficult for the public to follow the legislative process. It also makes it difficult to hold decision makers accountable. Having documents such as the four-column document regularly updated and made available during the trilogue process would facilitate greater public understanding of what is happening.

4. What, if any, concrete steps could the institutions take to inform the public in advance about trilogue meetings? Would it be sufficient a) to publicly announce only that such meetings will take place and when, or b) to publish further details of forthcoming meetings such as meeting agendas and a list of proposed participants?

Any forthcoming meetings (both of political and of technical nature) should be announced and all the information that is made available to the negotiating parties should also be made available to the public in a convenient and accessible manner online. In the end, this is about public policy making with large effects for European citizens in all parts of the union. There is no reason to not make all available information public in a comprehensive manner.

5. Concerns have been expressed that detailed advance information about trilogue meetings could lead to greater pressure on the legislators and officials involved in the negotiations from lobbyists. Please give a brief opinion on this.

Public pressure on those responsible for designing law is an essential part of a democratic system, and this pressure should come from balanced interests. The current process of trilogues is only accessible by well-funded and well-connected interest groups. To ensure balance, all interest groups representing all areas of public concern should have access to relevant documents, not just those able to fund intensive advocacy efforts.

6. In your opinion, should the initial position ("mandate") of all three institutions on a legislative file be made publicly available before trilogue negotiations commence? Briefly explain your reasons.

In current procedures, the initial position, the "mandate", is supposed to be publicly available. In reality however, this is rarely the case (see answer to question 7) and there are often delays in their publication online, sometimes up to weeks after the first trilogue meeting has already taken place. This is particularly more a problem for Council positions, as the European Parliament tends to be much quicker. Furthermore, the "four column" tables should be made publicly available, including any updates that are made based on agreements or changes.

7. What, if any, concrete measures could the institutions put in place to increase the visibility and user-accessibility of documents and information that they **already** make public?

To increase the accessibility of trilogue information that has already made public, all relevant elements of each legislative file should be made available in one convenient online space. Each file should include the positions of all three institutions (and any other opinion making EU body), names and information on the negotiators representing each institution, a timeline and all related documents that can be linked to the file.

A model for such a system is the European Parliament's Legislative Observatory Platform. It serves as an informative and accessible database that contains all relevant information organised by legislative dossier. The Council and the Parliament could provide their related documents to such a platform in a timely manner, including positions and minutes. EU citizens would benefit from being able to access one location with all documents, linking to each of the three institutions.

8. Do you consider that, **in relation to transparency**, a distinction should be made between "political trilogues" involving the political representatives of the institutions and technical meetings conducted by civil servants where no political decisions should be taken?

All information on meetings, whether political or technical, should be made available for transparency reasons. Technical meetings are important, for example, for the common legal understanding of specific texts. Therefore, the public should also be aware of these common legal understandings. In many cases technical meetings also have political consequences. For example, during the negotiations mentioned above on the Baltic multi-annual plan (see question 1), several

technical trilogues were held that discussed legal definitions and interpretations of the Common Fisheries Policy. This had major implications for the political trilogues.

9. Please comment on other areas, if any, with potential for greater trilogue transparency. Please be as specific as possible.

To further increase the transparency of trilogues, the following information should be made publicly available after every trilogue meeting:

- Participants of trilogue meetings from all institutions;
- Outcomes of the meetings should be made publicly available on the same day where possible.

Furthermore, timetables of trilogues should be publicly available in advance of the meetings.